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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,087	03/16/2004	Ching-Yu Chang	2003-1435 / 24061.911	4048
43717 7590 06/15/2010 HAYNES AND BOONE, LLP IP Section 2323 Victory Avenue Suite 700 Dallas, TX 75219				
EXAMINER				
KO, STEPHEN K				
ART UNIT		PAPER NUMBER		
1714				
MAIL DATE		DELIVERY MODE		
06/15/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/802,087

**Applicant(s)**

CHANG ET AL.

**Examiner**

STEPHEN KO

**Art Unit**

1714

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 03 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 2-27.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Michael Komakov/  
Supervisory Patent Examiner, Art Unit 1714

/S.K./,  
Examiner

Continuation of 11. does NOT place the application in condition for allowance because: In response to applicants' argument that Fukami does not show two different reservoirs, the Examiner's position is that the claim does not require the primary supply reservoir different from the secondary supply reservoir. For example, one can fill the reservoir 5 with first fluid containing no surfactant during primary operation (primary reservoir) and then fill the reservoir 5 with surfactant after the primary operation (i.e. secondary operation) (secondary reservoir). With regard to applicant's "means for X" of claims 15-16 and 19, the language appears to be an attempt to invoke 35 USC 112, 6th paragraph interpretation of the claims. A claim limitation will be interpreted to invoke 35 U.S.C. 112, sixth paragraph, if it meets the following 3-prong analysis:

- (A) the claim limitations must use the phrase "means for" or "step for,"
- (B) the "means for" or "step for" must be modified by functional language; and
- (C) the phrase "means for" or "step for" must not be modified by sufficient structure, material or acts for achieving the specified function.

In the instant case, applicant appears to have met the limitations set forth in MPEP § 2181, and examiner has turned to the specification for clarification. In the specification, applicant defines the "means for X" as Y. Accordingly, the examiner is interpreting the "means for X" to encompass Y and its equivalents. Equivalent structures may include those that perform the function specified in the claim, structures that are not excluded by any specific definition provided in the specification for an equivalent, or is a structural equivalent of the corresponding element disclosed in the specification. See MPEP 2183. In response to applicants' argument that the examiner improperly interpreted the means-plus-function limitations/improperly ignores functional language, the examiner's position is that the Federal Circuit explained the two step analysis involved in construing means-plus-function limitations in *Golight Inc. v. Wal-Mart Stores Inc.*, 355 F.3d 1327, 1333-34, 69 USPQ2d 1481, 1486 (Fed. Cir. 2004): The first step in construing a means-plus-function claim limitation is to define the particular function of the claim limitation. *Budde v. Harley-Davidson, Inc.*, 250 F.3d 1369, 1376 [58 USPQ2d 1801, 1806] (Fed. Cir. 2001). "The court must construe the function of a means-plus-function limitation to include the limitations contained in the claim language, and only those limitations." *Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, 296 F.3d 1106, 1113 [63 USPQ2d 1725, 1730] (Fed. Cir. 2002). The next step in construing a means-plus-function claim limitation is to look at the specification and identify the corresponding structure for that function. "Under this second step, 'structure disclosed in the specification is "corresponding" structure only if the specification or prosecution history clearly links or associates that structure to the function recited in the claim.'" *Med. Instrumentation & Diagnostics Corp. v. Elekta AB*, 344 F.3d 1205, 1210 [68 USPQ2d 1263, 1267] (Fed. Cir. 2003) (quoting *B. Braun Med. Inc. v. Abbott Labs.*, 124 F.3d 1419, 1424 [43 USPQ2d 1896, 1900] (Fed. Cir. 1997)) and the application of a prior art reference to a means or step plus function limitation requires that the prior art element perform the identical function specified in the claim (See MPEP 2182). In this case, with regard to claim 15, applicants' means for positioning a wafer, in accordance with 35 U.S.C. 112 sixth paragraph, is presumed to refer to a wafer stage (Fig. 4, #402). The use of wafer stage is discussed in paragraphs 25 of the specification. Applicants' means for providing the first fluid containing no surfactant, in accordance with 35 U.S.C. 112 sixth paragraph, is presumed to refer to a primary supply reservoir (Fig. 4, #412), as discussed in paragraph 25 of the specification. Applicants' means for providing a surfactant to the first fluid to form a second fluid to reduce an adherence of floating defects to the wafer or the objective lens, in accordance with 35 U.S.C. 112 sixth paragraph, is presumed to refer to a secondary supply reservoir (Fig. 4, not shown), as discussed in paragraph 26 of the specification. With regard to claim 16, applicants' means for collecting the first fluid, in accordance with 35 U.S.C. 112 sixth paragraph, is presumed to refer to a primary recovery reservoir (Fig. 4, #414). The use of primary recovery reservoir is discussed in paragraphs 25 of the specification. With regard to claim 19, applicants' means for collecting the second fluid, in accordance with 35 U.S.C. 112 sixth paragraph is presumed to refer to a secondary recovery reservoir (Fig. 4, not shown). The use of secondary recovery reservoir is discussed in paragraph 26 of the specification. The recitation "means for performing a light exposing operation on the wafer using an objective lens immersed in the first fluid" (claim 15, L. 4-5) is not interpreted under 35 USC 112, sixth paragraph, because it is modified by sufficient structure, material, or acts for achieving the specified function. MPEP 2181. In response to applicant's argument that Hazelton et al do not disclose the surfactant-containing fluid and providing a surfactant to the first fluid as recited in claim 15, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In response to applicants' argument that Amblard is teaching away from the claimed invention, the examiner's position is that although Amblard discloses "a developer is not contact with the immersion lithography arrangement after the immersion lithography fluid is removed", it does not teach away, since Hazelton et al (primary reference) does not criticize, discredit, or otherwise discourage using a developer having cleaning effect after immersion lithography fluid is removed. The statement "a developer is not contact with the immersion lithography arrangement after the immersion lithography fluid is removed" disclosed by Amblard does not render teaching away because the statement only criticize, discredit, or otherwise discourage contacting a developer with the immersion lithography arrangement after using the immersion lithography fluid disclosed by Amblard, however, there is no criticize, discredit, or otherwise discourage using a developer having cleaning effect after immersion lithography fluid disclosed by Hazelton et al is removed.